

THE HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ERIC ADERHOLD, on his own behalf and on
behalf of other similarly situated persons,

Plaintiff,

v.

CAR2GO N.A. LLC,

Defendant.

Case No. 2:13-cv-489 RAJ

**STIPULATED MOTION TO DISMISS
ACTION WITH PREJUDICE;
[PROPOSED] ORDER**

NOTE ON MOTION CALENDAR FOR
MARCH 11, 2014

With this stipulated motion, Plaintiff Eric Aderhold and Defendant car2go N.A. LLC respectfully request that the Court enter an order to dismiss this action with prejudice.

CERTIFICATION OF MOTION

Pursuant to the Court's order, Dkt. No. 30 at 2, the parties certify that they have met and conferred to discuss means to coordinate the briefing schedule of this motion, the number of motions that might otherwise be filed, and the length of these motions.

BACKGROUND

A. The Parties' Joint Background Statement

On March 18, 2013, Plaintiff filed a complaint alleging that Defendant violated the federal Telephone Consumer Protection Act ("TCPA"), the Washington's Consumer Protection Act ("CPA"), and Washington's Commercial Electronic Mail Act ("CEMA") by sending him a text message. *See* Dkt. No. 1.

On February 27, 2014 the Court dismissed Plaintiff's TCPA claim. *See* Dkt. No. 74.

1 For separate reasons articulated by the parties in their supplemental background
 2 statements below, the parties join in this stipulated motion to further judicial economy and to
 3 avoid having the Court and the parties incur unnecessary litigation expenses and costs.

4 The parties agree that Plaintiff has not settled any portion of his claims against
 5 Defendant.

6 **B. Plaintiff's Supplemental Background Statement**

7 In its February 27, 2014 order, the Court ruled that "Car2Go's Text Was Not
 8 'Telemarketing'". See Dkt. No. 74 at 14. The ruling appears to indicate that the Court will
 9 dismiss Plaintiff's state law claim for violating the CEMA and CPA, as this claim is grounded
 10 primarily on CEMA's prohibition of "commercial text messages". See RCW 19.190.060. And
 11 whether a text message might be "telemarketing" under the TCPA has been found to control
 12 whether a text message is a "commercial text message" under CEMA. See *Gragg v. Orange Cab*
 13 *Co., Inc.*, C12-0576RSL, 2013 WL 195466, *3-5 & n. 4 (W.D. Wash. Jan. 17, 2013); *c.f.*
 14 *Chesbro v. Best Buy Stores, L.P.*, 705 F.3d 913, 919 (9th Cir. 2012). Accordingly, the Court's
 15 February 27, 2014 order makes clear to Plaintiff that further litigation of his state law claim
 16 before the Court would be futile prior to appellate review.

17 Plaintiff joins this stipulated motion in reliance upon his understanding and belief that
 18 doing so provides the most efficient and expeditious manner to obtain appellate review of the
 19 Court's rulings that impede his claims against Defendant. See *Concha v. London*, 62 F.3d 1493,
 20 1507 (9th Cir. 1995) ("[P]laintiffs may appeal from a voluntary dismissal *with prejudice*, at least
 21 where the plaintiff is not acting pursuant to a settlement agreement intended to terminate the
 22 litigation."); *also see Berger v. Home Depot USA, Inc.*, 741 F.3d 1061, 1066 (9th Cir. 2014)
 23 ("We conclude that this stipulated dismissal is sufficiently adverse to his interests to allow him to
 24 appeal."). Plaintiff intends to initiate appellate review after the Court dismisses this action. And
 25 Plaintiff intends to continue prosecuting all of his claims under both federal and state law against
 26 Defendant if an appellate court remands this case for further proceedings. See *Concha*, 62 F.3d at
 27

1 1507 (“If the plaintiff prevails on appeal, and the determinative district court ruling is reversed,
2 then his claim is remanded to the district court for further proceedings.”).

3 **C. Defendant’s Supplemental Background Statement**

4 Defendant agrees with Plaintiff’s assessment that the Court’s finding that “[t]here is no
5 indication that the text was intended for anything other than the limited purpose stated in its two
6 sentences: to permit Mr. Aderhold to complete registration...” is fatal to the Plaintiff’s CEMA
7 claim. Dkt. No. 74 at 14-15. Defendant also maintains that the Court’s ruling regarding the
8 applicability of the “express consent” defense to the TCPA provides a separate complete defense
9 to Plaintiff’s remaining state law claims.

10 Defendant does not agree that Plaintiff’s state law claims, here voluntarily dismissed,
11 may revive upon remand. Nonetheless, Defendant joins this stipulated motion because the
12 proposed, voluntary dismissal of Plaintiff’s surviving claims involves less expense than further
13 litigation before the Court. Defendant reserves all rights it has to oppose any appeal made by
14 Plaintiff and believes that the Court’s February 27, 2014 order is correctly decided in every
15 respect.

16 **LEGAL FOUNDATION**

17 The Federal Rules of Civil Procedure permit the parties to stipulate to a dismissal. *See*
18 Fed.R.Civ.P. 41(a)(1). The Federal Rules of Civil Procedure otherwise provide that the Court can
19 enter a voluntary dismissal “on terms that the court considers proper.” *See* Fed.R.Civ.P. 41(a)(2).

20 **STIPULATION**

21 For the reasons set forth above, the parties stipulate as follows:

- 22 1. This action should be dismissed with prejudice, with judgment entered in favor of
23 Defendant, and each party to bear their own expenses and costs.
- 24 2. However, if there are any future proceedings in this action before the Court or any
25 other district court, each party reserves and retains the right to seek recovery of
26 any and all recoverable expenses and costs after the conclusion of any such future
27 proceedings.

1 DATED: March 11, 2014

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Counsel for Defendant

ORDER

17 IT IS SO ORDERED. The parties' stipulation above is now an order of the Court.
18 Pursuant to Fed.R.Civ.P. 58(b)(2), the clerk is directed to enter judgment in favor of defendant
19 with each party to bear their own expenses and costs.

20 DATED this _____ day of _____ 2014.

21
22
23 THE HONORABLE RICHARD A. JONES

CERTIFICATE OF SERVICE

The undersigned certifies that, on this date, a true and correct copy of the foregoing document(s), including any attached document(s), will be or has been served on the persons listed below in the manner shown as follows:

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Dated: March 11, 2014

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